Office of the Secretary
Service Date
July 13, 2004

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR AUTHORITY TO INCREASE ITS INTERIM AND BASE RATES AND CHARGES FOR ELECTRIC SERVICE.	**CASE NO. IPC-E-03-13** **ORDER NO. 29547**

The Commission on May 25, 2004, issued Order No. 29505 in this Idaho Power Company rate case, approving an increase in the Company's annual revenue requirement in the amount of $25,329,438. The Company on June 15, 2004, timely filed a Petition for Reconsideration pursuant to *Idaho Code* § 61-626 and the Commission's Rules of Procedure 33 and 331. IDAPA 31.01.01.033 and .331. The Company identified several issues for which it asked reconsideration, but only one of which would significantly affect the Company's revenue requirement. The Commission Staff was the only party to file an answer to Idaho Power's Petition for Reconsideration. The Commission in this Order grants in part Idaho Power's Petition for Reconsideration.

IDAHO POWER'S PETITION FOR RECONSIDERATION

1. Adjustment to Test Year Tax Expense.

The first and most significant issue Idaho Power identified for reconsideration relates to the determination of the Company's federal income tax expense. As noted in its Petition, Idaho Power calculated its test year federal income tax costs based on the current statutory income tax rate of 35%. The Company lowered the test year federal tax rate to account for the non-Idaho jurisdiction portion of its business and the Idaho state income tax. The Commission in Order No. 29505 adjusted the Company's test year income tax expense, adopting a proxy income tax rate to recover expected tax costs in rates. The Commission used a historic five-year average to calculate the Company's test year expense in lieu of the statutory rate. This reduced the test year income tax expense by $11,504,677.

Idaho Power in its Petition for Reconsideration renews several arguments it previously made against the use of a historic average tax rate. For example, the Company argued in rebuttal testimony and its post-hearing brief that use of the proxy tax rate violates principles against retroactive ratemaking. The Commission addressed those arguments in Order No. 29505, and will not address them here. We have determined, however, that reconsideration is appropriate on the tax issue for the purpose of receiving additional evidence.

Idaho Power asserts in its Petition that serious consequences to the Company "would ensue if the Commission's Order violates the normalization requirements of the Internal Revenue Code." Petition for Reconsideration p. 11. The Company discussed portions of an Internal Revenue Service private letter ruling and attached to its Petition letters from accounting firms. Idaho Power stated it "requested that the normalization issue be reviewed by its outside tax counsel and outside auditor, as well as other national accounting firms and has requested advice as to whether or not they believe a normalization violation of the Internal Revenue Code has been triggered by Order No. 29505." Petition for Reconsideration p. 13. Staff in its Answer objected to the new evidence Idaho Power included with its Petition, noting that the Commission's Rules of Procedure require a petitioner to include only a *statement* of the nature and quantity of evidence the petitioner will offer if reconsideration is granted, and not the evidence itself. See IDAPA 31.01.01.331. Staff also asserted, if the Commission grants reconsideration to receive the Company's evidence, "a hearing would be appropriate and [Staff] is prepared to offer additional relevant evidence, including on the effect normalization of the significant tax refund would have had on customer rates." Staff Answer, p. 4.

Staff's objection to Idaho Power's inclusion of new evidence with its Petition is well-founded, and the Commission did not consider the evidence in reviewing the Company's request for reconsideration. The appropriate forum for new evidence to be presented is in a hearing on reconsideration that will allow all parties to review the evidence and respond. Given the significance of the income tax adjustment made by the Commission in Order No. 29505, we find it is appropriate to grant reconsideration on the issue and permit the parties an opportunity to present new evidence regarding the use of a five-year average to calculate the Company's income tax expense. The Company and Staff are directed to propose a procedural schedule to complete the reconsideration process, including an evidentiary hearing, within the statutory time constraints.

2. Computational Errors.

Idaho Power identified in its Petition "computational errors that understate Idaho Power's Idaho jurisdictional revenue requirement by $2,668,367."[1] Petition for Reconsideration p. 25. The Company identified calculation errors in the Company's depreciation adjustment to rate base, its budget to actual expense adjustment, and the pension expense adjustment. The errors occurred in Staff's calculations for its recommended adjustments to the test year expenses or rate base. The Commission approved some of Staff's recommendations, which were then incorporated into Order No. 29505, including the underlying computational errors. The total amount of the miscalculations is $2,668,367, which if corrected would bring the Commission approved revenue requirement increase to $27,997,805. Staff in its Answer supported granting reconsideration to correct the computational errors, and stated the Company and Staff will submit a statement showing correction to the calculation errors.

It is appropriate to grant reconsideration to correct calculation errors that occurred in Order No. 29505. The depreciation adjustment error occurred when $2,205,647 was deducted from the Company's Electric Plant in Service accounts rather than from Accumulated Depreciation Reserve accounts. According to Idaho Power, correcting the error increases the Company's rate base by $4,411,294 and its Idaho jurisdiction revenue requirement by $522,228. The budget to actual expense error was an inadvertent omission of $379,967 from the Company's General Plant Maintenance Account. The Idaho jurisdiction revenue requirement amount is $271,853. The pension expense adjustment error occurred because approximately $2 million was deducted from test year pension expense accounts when it should have been deducted from rate base. The adjustment to correct the error is an increase in the Idaho jurisdiction revenue requirement in the amount of $1,774,286. The three calculation errors resulted in understating the Company's revenue requirement by $2,668,367.

Idaho Power asked the Commission to allow it to defer, with interest, the amount of $2,668,367 "for inclusion in customer rates when any increase in revenue requirement resulting from the Company's Petition for Reconsideration in this case is authorized or when the 2005-2006 Power Cost Adjustment is implemented, whichever may occur first." Petition for

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[1] Idaho Power on June 11, 2004 filed a Notice of Computational Errors in Establishing the Company's Revenue Requirement, which included a request that the Commission issue an order the next day to correct the computational errors. We believe it appropriate to address these errors in an Order on Reconsideration.

Reconsideration p. 26. Because the errors the Company identified are simply calculation errors, and prevent the Company's recovery of revenue the Commission intended it to obtain, it is appropriate that the Company begin recovery of that amount as soon as possible. Accordingly, the Commission grants reconsideration to adjust the revenue requirement stated in Order No. 29505 for these computational errors, finds that it should be increased to $27,997,805, and directs the Company to work with Staff to spread the amount in rates, on or before August 1, 2004. The Company may file tariffs to adjust its rates as soon as possible to reflect recovery of the correct revenue requirement.

3. Three-Year Recovery of Additional Tax Assessment, Disallowance of Refund Litigation Expenses, Removal of Capitalized Portion of Incentive Pay.

Idaho Power asks for reconsideration on three separate accounting issues, but does not ask for a hearing, nor does the Company propose new evidence on the issues. The first issue is the Commission's decision to amortize recovery over a three-year period of a $2.9 million tax payment resulting from the Company's 1998-2000 tax audit cycle. The Commission explained why it adopted a three-year recovery period in Order No. 29505: First, "ratepayers should pay the amount of the tax deficiencies once, not the entire three-year deficiency every single year." Second, "because the Company's three-year audit cycle allows for the possibility of tax deficiencies every third year, the Commission finds it reasonable to average the additional tax deficiencies over a three-year period. This symmetry between tax expense and collection in rates will allow the Company to recover its legitimate tax costs while minimizing the potential for over-collection." Order No. 29505 p. 30. In its Petition for Reconsideration, Idaho Power argues that past Commission decisions allowed recovery of tax expenses in the year in which the tax was paid. The Company acknowledged the Commission can change its precedent, but contended that "a two-year amortization period is a more reasonable period" than the Commission approved three-year recovery period. The Commission is not convinced by the Company's argument that the three-year recovery period is an error requiring correction on reconsideration. Idaho Power concedes the Commission is not bound by statements made in past cases that were based on the unique facts of those historical cases. The Commission finds insufficient basis to grant reconsideration on this point.

The second accounting issue relates to the Commission's decision to disallow recovery of legal costs Idaho Power incurred by participating in two different refund cases filed at the Federal Energy Regulatory Commission (FERC). The Company asserts it "is exposed to a continuing stream of litigation in both the courts and before various regulatory agencies each year," and that the $352,544 legal costs for the refund cases occurred in the test year and is representative of its annual legal expenses. Idaho Power implied the Commission, by not including the refund case litigation in recoverable expenses, is not allowing the Company to recover normal legal expenses that occur each year. Idaho Power argues in its Petition that "by their very nature, each legal proceeding is unique," and because these legal expenses occurred during the test year, it is unreasonable for the Commission to exclude them from test year expenses. Petition for Reconsideration p. 20. At the least, the Company asserts the Commission should amortize recovery of the refund case litigation over a five-year period, just as it did for the Company's consultant fees expenses.

The Commission did allow as recoverable costs the usual and normal legal expenses it anticipates the Company will incur each year. Although the Commission did not allow recovery in rates of the refund litigation costs, "the majority of legal costs incurred in 2003 remain in the test year expenses for recovery." Order No. 29505 p. 28. As we explained, the refund litigation expenses are unusual and extraordinary, partly due to their "relationship with trading activities." *Id.* The FERC cases came about because of the trading practices of wholesale energy brokers, including IDACORP Energy, a sister subsidiary of IDACORP. Idaho Power was put in the unusual position of having to defend its interests against the interests of an affiliated corporate entity. The Company's involvement in the cases arose because of the activities of IDACORP Energy and IDACORP, making the resulting litigation expense extremely unusual. The Commission concluded it is inappropriate to ask ratepayers to pay these extraordinary legal expenses, in addition to the usual legal expenses Idaho Power incurs each year. The Commission declines to reconsider its decision to disallow recovery of the refund litigation cases expenses.

The third accounting issue relates to the Commission's decision to eliminate from the test year all pro forma adjustments the Company made for incentive pay. Idaho Power limits its request for reconsideration to the removal of the capitalized portion of the incentive pay and does not ask for reconsideration of the decision to eliminate the operating expense portion. The

Company's test year rate base included $7,741,747 for incentive pay expenses incurred prior to the test year. Idaho Power notes the Commission's decision would require it to immediately record a reduction in earnings in that rate base amount. The Company asks for approval to create a regulatory asset in the amount of $7,741,747 to be amortized, without interest, over a 20-year period. The Company assumes this treatment, if allowed, would permit it to add $387,088 to its annual expenses.

Although the Company disagrees with the decision, Idaho Power does not ask for reconsideration of the *merits* of the Commission's decision on incentive pay. Instead, the Company states that the Commission's decision "will have an immediate and substantial impact on the Company's earnings." Petition for Reconsideration p. 23. In other words, Idaho Power does not direct attention to factual or legal errors regarding removal of the incentive pay from the test year, and instead asks for relief from the consequences of the decision. The Commission appreciates the concern the Company expressed regarding removal of the capitalized portion of the incentive pay, but that by itself does not provide a basis for reconsidering the decision. The Company's request for additional relief on reconsideration is therefore denied.

4. Clarification of DSM Program for Schedule 19 Customers.

Idaho Power also asks the Commission to clarify its intent regarding a Demand Side Management program for Schedule 19 customers. Noting testimony that the Company currently does not administer a conservation program for Schedule 19 customers, we stated in Order No. 29505 that "the Commission would like the Company to develop and present a conservation program targeted specifically to Schedule 19 customers." Order No. 29505 p. 63. The Commission provided some guidance for an appropriate program, suggesting it should allow "Schedule 19 customers to determine appropriate energy conservation improvements to their own facilities and receive matching funds from their contributions to Energy Efficiency Rider program to install the improvements." Order No. 29505 p. 63. The Commission deliberately left flexibility in development of the details for the program, asking the Company to "work with the Schedule 19 industrial customers to develop a proposal to submit to the Commission." *Id.*

In response to questions presented by Idaho Power in its Petition, the Commission provides additional guidance for a Schedule 19 conservation program, but still intends that the Company develop a program in conjunction with the customers and Staff. The program should enable Schedule 19 customers to propose conservation improvements at their facilities and receive matching funds from the Energy Efficiency Rider program to install them. The Commission intended the customer to pay one-half the cost and receive matching funds for the other one-half cost, but not in an amount greater than the customer's contributions to the Energy Efficiency Rider program. For this program, the customers' contributions will be counted from June 1, 2004 forward. The Commission did not intend for the program to bypass the Energy Efficiency Advisory Group, nor does the Commission believe it will be necessary to issue an order approving the program. With this additional guidance, we are optimistic the Company will soon develop an energy efficiency program for Schedule 19 customers.

CONCLUSION

Given the significance of the income tax expense adjustment made by the Commission in Order No. 29505, the Commission grants reconsideration on the issue to provide the Company and other parties an opportunity to present new evidence regarding the use of a five-year average to calculate the Company's income tax expense. The Company and Staff are directed to propose a procedural schedule to complete the reconsideration process within the statutory time constraints. The Commission also grants reconsideration to adjust the revenue requirement stated in Order No. 29505, increasing it to $27,997,805, to correct the computational errors the Company identified in its Petition for Reconsideration. The Company is directed to work with Staff to spread the amount in rates, on or before August 1, 2004. Finally, the Commission grants reconsideration for the purpose of providing additional guidance for a Schedule 19 conservation program, and that information is included in this Order.

The Commission denies reconsideration of the other issues identified in the Petition for Reconsideration.

O R D E R

IT IS HEREBY ORDERED that Idaho Power's Petition for Reconsideration is granted to allow the Company and parties an opportunity to present new evidence regarding the use of a five-year average to calculate the Company's income tax expense. The Commission will approve a procedural schedule proposed by the parties to complete the hearing on reconsideration within the time provided by statute.

IT IS FURTHER ORDERED that reconsideration is granted to correct the computational errors identified by the Company in its Petition. Idaho Power's revenue requirement is increased to $27,997,805 with correction of the computational errors.

IT IS FURTHER ORDERED that reconsideration is granted for the purpose of providing additional guidance for a Schedule 19 conservation program, and that information is included in this Order.

IT IS FURTHER ORDERED that reconsideration is denied on the three-year recovery of additional tax assessment, disallowance of Refund Litigation Expenses, and removal of the capitalized portion of incentive pay.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th day of July 2004.

Paul Kjellander

PAUL KJELLANDER, PRESIDENT

Marsha H Smith

MARSHA H. SMITH, COMMISSIONER

Dennis S. Hansen

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell

Jean D. Jewell
Commission Secretary

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